

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, :
:
-v- : 07 Cr. 658 (DLC)
:
RAFAEL BARRIOS, : MEMORANDUM OPINION
Defendant. : AND ORDER
:
-----X

DENISE COTE, District Judge:

The defendant Rafael Barrios ("Barrios") has filed motions for discovery and to suppress his post-arrest statements and the fruits of an inventory search of his car. To support the motion to suppress he has submitted his own affidavit and affidavits from two companions who were with him at the time of his arrest. His affidavit is unsigned.

The motions for discovery must be denied for failure to comply with S.D.N.Y. Local Crim. R. 16.1. The request for a hearing on the motion to suppress is granted, on the following conditions.

The motion to suppress the fruits of the search of the vehicle is supported by affidavits which contest whether the seized vehicle was parked illegally. The defendant also argues that the Government has the burden to show that the inventory search was conducted in a manner that was consistent with established procedures. The Government consents to a hearing on

the location of the vehicle, but argues that its seizure and subsequent inventory search were legal in any event. It does not address whether it has the burden to demonstrate the regularity of the search of the vehicle. A hearing will be held as to the location of the vehicle and the circumstances surrounding the inventory search of the car.

The motion contends that the defendant's post-arrest statements must be suppressed because they were uttered without the benefit of Miranda warnings and while the defendant was held in handcuffs in an "aggressive police dominated atmosphere." The defendant's affidavit is unsigned and makes no mention of coercive tactics or intimidation. He asserts only that the questioning occurred after he had been placed in handcuffs and before he was read his Miranda rights. The Government concedes that each of Barrios' four post-arrest statements was made without the benefit of Miranda warnings, but identifies independent bases for their admission. As it now stands, there is no dispute requiring a hearing. The defendant's affidavit is unsigned and does not in any event represent that his will was overborne or dispute that he spontaneously uttered one of the remarks the Government intends to offer against him at trial. On the assumption that Barrios will submit a signed affidavit before the hearing that raises issues of fact that require a hearing, a hearing will be held to resolve any disputes

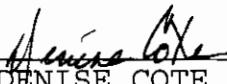
regarding the circumstances in which each of his post-arrest statements was uttered.

CONCLUSION

Barrios' October 1, 2007 motion for discovery and for a hearing to support his motion to suppress is granted in part. The motion for discovery is denied without prejudice to renewal following compliance with S.D.N.Y. Local Crim. R. 16.1. The motion for a hearing is granted to the extent described herein.

SO ORDERED:

Dated: New York, New York
October 10, 2007


DENISE COTE

United States District Judge